



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Tenant Farming Advisory Forum

**DRAFT Minutes of Tenant Farming Advisory Forum (TFAF)
held on Tuesday the 17th April 2018, Bidwells Offices, Perth**

Present:		Actions
Dr Bob McIntosh	Tenant Farming Commissioner	TFC
Sarah Jane Laing	Scottish Land & Estates	SJL
David Johnstone	Scottish Land & Estates	DJ
Christopher Nicholson	Scottish Tenant Farming Association	CN
Sandy Simpson	Scottish Tenant Farming Association	SS
Andrew McCornick	NFUS	AM
Andrew Wood	RICS	AW
Rob Forrest	SAAVA	RF
Jon Robertson	Agricultural Law Association	JR
Jen Willoughby	Scottish Government	JW
Hamish Trench	Scottish Land Commission	HT
Sarah Allen	Scottish Land Commission	SA
James MacKessack-Leitch	Scottish Land Commission	JML

1. Welcome and Apologies

TFC welcomed everyone to the meeting, and thanked Bidwells for their hospitality.

Apologies received from Gemma Cooper, NFUS.

2. Minutes of the last meeting – 19th September 2017

Agreed.

3. Update from the Tenant Farming Commissioner

TFC presented the latest Code to be published on the Late Payment of Rent, and the Guide on the use of Alternative Dispute Resolution.

TFC updated members on the casework to date. So far there have been no requests for a formal inquiry as defined under the Land reform (Scotland) Act 2016. Queries have been resolved through early intervention by the TFC and there was general agreement that it was

more productive to deal with issues at an early stage rather than encourage formal complaints. All queries were recorded as set out in the accompanying paper.

TFC confirmed that Guides issued under the Independent Adviser on Tenant Farming (Andrew Thin) are just guides, and are not enforceable like the new TFC Codes. It is hoped that these Guides would still be followed in good faith, however, if necessary they could become the basis for new Codes.

There is no specific TFC annual report, TFC will contribute a section to the Scottish Land Commission annual report.

The TFC does have to make a formal report to Scottish Ministers after three years in operation (due 2020). Input from TFAF members will form part of this report and aid the assessment of the role of the TFC.

Action	SLC to survey TFAF members annually for their views on the role of the TFC to build evidence for the eventual report to Ministers.
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TFC has asked Revenue Scotland for clarity over the implications of Land and Buildings Transactions Tax (LBTT) as regards succession in tenancies. A number of cases of successions being halted by uncertainty over LBTT implications have been highlighted to the TFC. TFC is awaiting an answer.

Action	TFC to update members when clarification is received. SLE to send TFC relevant correspondence from Revenue Scotland
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4. Review of Agents

Report on the review of Agents has not yet been published, but will go Scottish Ministers shortly. TFAF members were thanked for their input.

Action	JW to check on when the report is likely to be published.
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The report was broadly welcomed and overall the research had demonstrated that majority of tenant/landlord/agent relationships are positive.

There are a number of observations:

- It is clear where more work is needed, and although the report is largely positive there should be no complacency
- Where issues have arisen it is largely due to poor interpersonal skills and behaviour, not professional competence
 - There may be a role for professional bodies to “upskill” their members in this area
 - Professional bodies may also wish to consider how they could improve their complaints processes

Members noted similarities to the findings of the previous (IPSOS Mori) survey on tenant/landlord/agent attitudes, although not directly comparable, and agreed that a repeat survey in five years' time would be useful to assess progress.

Action	SLC to plan for a repeat survey in 2022/23
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5. Land Lines Discussion Paper: Encouraging Agricultural land lettings in Scotland for the 21st century by Jeremy Moody

TFC introduced the paper to Members, reaffirming that this is a paper to promote discussion and does not necessarily reflect the views of the SLC. The paper is due to be published on the 24th April 2018.

Some of the key points for consideration raised by members were:

- There was a general welcome for the proposal of consolidating Agricultural Holdings legislation – but what would that actually look like?
- Agreement that uncertainty is a key factor in the reduction of tenancies, but what can be done to boost confidence in the sector?
 - In particular concerns were raised around retrospective legislative changes
- What, if anything, should be done to encourage landlords to stop taking previously tenanted land back in hand or moving to contracting arrangements?
- What are the implications for different farming systems, i.e. arable vs. livestock?

SLC would welcome feedback on the paper from members on the paper, and on the wider question of what the SLC can do to help support the tenanted sector.

Action	All to provide feedback to SLC on the points raised in the discussion paper, and any other observations, by the end of June 2018
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Clarification was requested on the data used in the paper, in particular the availability (or lack thereof) of numbers, types, and sizes of tenancies in Scotland.

Action	SLC to investigate how to better publish and disseminate data collected by the Scottish Government
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6. Increasing the availability of farmland for new entrants – SLC research

The report has been commissioned from the James Hutton Institute, SLC has received a draft and expects a final version to be completed by the end of April 2018. SLC will publish the report shortly thereafter and will disseminate to TFAF members.

Action	SLC to disseminate final report to TFAF members once complete
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Members agreed that the direction of travel was good, and made clear their aspirations that this should act as a steer to Scottish Government policy in this area.

Members asked that the guidance portion of the report be as clear as possible, and draw on existing examples.

SLC asked members to provide feedback on the report and guidance, with a particular focus on what SLC should be seeking to achieve in this area.

Action	All to provide feedback to SLC by the end of June 2018
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7. Anniversary of the Amnesty on Tenants' Improvements

All agreed more awareness raising was required. Almost a year into the amnesty the numbers of tenants taking action seems particularly low.

A programme of joint communications between NFUS, SLE, STFA, SG and SLC has been agreed to help raise awareness of the amnesty and process.

TFC confirmed there have not yet been any issues raised with the TFC regarding the amnesty, however, there have been a number of questions.

Members highlighted some points regarding the amnesty:

- There was a clear preference for informal discussions between tenants and landlords before the serving of amnesty notices
 - All parties are encouraged to work proactively
- In some cases there was confusion about what should or shouldn't be included, especially where improvements were made years or decades previously
- A balanced approach to discussions is necessary, and recognition that records may be missing many years afterwards
- Evidence should be provided where available, but that there is no requirement that this has to be invoices, or that proof of obtaining quotes is needed

Members suggested a template amnesty list, or a worked example would be helpful to the sector.

Action	RF in discussion with Jeremy Moody to see if SAAVA could provide the SLC with a template
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8. Update on Land Commission Programme of Work

HT updated members on the Commissions wider programme of work, specifically Land Value Tax (LVT), research on Scale and Concentration of Landownership, the review of Community Ownership Mechanisms, and community engagement.

On research into options for LVT members highlighted the need for:

- The relationship between LVT and other taxes, specifically Inheritance Tax and Capital Gains Tax to be examined
- Consideration of what is achievable given the location of tax powers, i.e. what is devolved and what is reserved

The research on scale and concentration is currently open for submissions, the call for evidence closes on the 30th June 2018, members are encouraged to participate and share the link to the survey: <https://landcommission.gov.scot/call-for-evidence/>

Specific points raised by members in relation to the research on scale and concentration:

- Ensuring that the evidence reflects urban as much as rural issues
- Covers all landowner types, i.e. public, private, charitable, community, etc.

While the Commissions research on reviewing Community Ownership mechanisms is focussed on the process of acquiring land or buildings, members felt there were significant questions to be answered on post-acquisition finance for community landowners. A common theme of a lack of transparency was highlighted including:

- Accounts not being available for inspection
- Similar funding not being available for all landowners
- Scottish Government failing to address reasonable enquires on the subject

Action	SLC to consider the issues raised.
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SLC is developing resources to aid landowner-community engagement, particularly with regard to developing a practical approach to implementing the Land Rights and Responsibilities Statement, the Land Use Strategy, and the Guidance on Engaging Communities in Decisions Relating to Land.

Members highlighted their aspirations for such resources:

- They would not impinge on day-to-day management and agricultural activities
- They would effectively manage public expectations
- That social media be seen as a key method of interaction

9. Update on commencement of legislation under Land reform Act 2016

JW updated members on the progress the Scottish Government has made.

Update of Schedule 5 of the Agricultural Holdings (Scotland) Act 1991:

- Regulations will go before parliament after the summer recess
- Expected to be enacted Oct/Nov 2018
- Confirmation that intangible improvements will not be included
- JW thanked members for their input on consents and regulations

Rent:

- Standard labour requirements will be available soon
- Percentages for gross profit will be available soon
- There are still questions deciding between gross output and budget models
 - However, gross output will be used as a starting point
- Timescale unclear, but will depend on consensus being reached, or Scottish Government making a final decision
 - In any case it is not expected to come in until 2020 at the earliest

Repairing Leases:

- Limited progress – not expected to come in until 2020 at the earliest

Relinquishments and Assignations, there are still issues with:

- Definitions
- Valuation methodology
- ECHR compliance

Enforced Sales – no further progress, cannot begin until after issues with Relinquishments and Assignations are resolved.

Members thanked JW for the update, recognising the challenges associated with implementing the legislation. Members felt that better resourcing would go some way to alleviating the situation, and suggested a letter to be sent to Ministers from the TFC, endorsed by TFAF members, emphasising stakeholders desire to see these matters progress and asking whether there are ways to increase resourcing.

Action	TFC to draft a letter to Ministers and dispatch
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JW updated members on the progress of the Housing Survey:

- The survey and analysis is complete and currently with Scottish Ministers
- There are definite issues with rural housing, in particular damp
- Stakeholders will get sight of the report before publication
- The Housing Minister is very keen to include Agricultural Housing

Members raised concerns particularly around the issues of “tolerable limits” – landowners may increasingly opt to sell rural housing rather than refurbish, reducing the availability of rented housing in rural areas, and compounding issues associated with holiday and second home buyers.

10. Any Other Business

Brexit:

- Does TFAF have a role to play?
- Key issue is the budget for payments – will it be the same, and will there be strings attached?
- Suggestion that it may be worth having a session with the Scottish Government Agricultural Champions
- TFAF to monitor the situation

11. Date of Next Meeting

Members agreed to change the cycle of meetings to May/Oct And requested that an interim meeting be held in July to discuss responses to Jeremy Moody’s discussion paper and next steps with regard to SLC’s work on increasing the availability of land for those who wish to farm.

Action	Next meeting will be July 2018, provisionally at Ingliston, detail to be confirmed.
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**Scottish Land Commission
April 2018**